

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CYNTHIA D. WOODMANCY,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

8:12CV90

MEMORANDUM AND ORDER ON
PLAINTIFF’S APPLICATION FOR
ATTORNEY FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT

On July 30, 2013, the plaintiff, Cynthia D. Woodmancy, filed an application for attorney fees under section 204(d) of the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). (See ECF No. 25.) She then filed an amended application for attorney fees on August 1, 2013. (See ECF No. 26.) Woodmancy seeks a fee award in the amount of \$5,552.85, and she asks “that the fees, after offset (if any), . . . be delivered to Plaintiff’s attorney.” (Pl.’s Am. Application at 2, ECF No. 26.)¹ She also “requests \$350.00 from the Judgment Fund for reimbursement of the filing fee.” (Id.) The defendant does not object to the amounts that Woodmancy requests. (Def.’s Response at 1, ECF No. 27.)

¹ The requested fee is based on 24.3 hours of attorney work at rates ranging between \$184.32 and \$186.36 per hour, and 11.9 hours of legal assistant work at a rate of \$90.00 per hour. (See, e.g., Pl.’s Am. Application, Ex. 1, Summary of Fee Request, ECF No. 26-1.)

The EAJA authorizes an award of “fees and other expenses” to a “prevailing party” in a case against the United States, “unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). I find that Woodmancy is a “prevailing party” within the meaning of the EAJA; that the defendant’s position was not “substantially justified”; that there are no special circumstances that make an award unjust; that Woodmancy’s counsel’s devotion of 24.3 hours of work to this case was reasonable; that counsel’s hourly rates, which are supported by uncontested evidence of an increase in the cost of living since March 1996, are reasonable; and that the legal assistant fees are reasonable. See 28 U.S.C. § 2412(d)(2)(A)(ii); Shalala v. Schaefer, 509 U.S. 292, 300-302 (1993) (holding that claimant who obtained judgment in her favor under “sentence four” of the Social Security Act is a “prevailing party” under the EAJA); Johnson v. Sullivan, 919 F.2d 503, 505 (8th Cir. 1990) (“We hold that where, as here, an EAJA petitioner presents uncontested proof of an increase in the cost of living sufficient to justify hourly attorney’s fees of more than [the amount specified in the EAJA], enhanced fees should be awarded.”). Cf. Richlin Sec. Serv. Co. v. Chertoff, 553 U.S. 571 (2008) (holding that a prevailing party may recover paralegal fees under the EAJA). (See also Pl.’s Am. Application, Exs. 1-4, ECF No. 26-1.) Woodmancy’s request for attorney fees in the amount of \$5,552.85 is granted. In accordance with Astrue v. Ratliff, 130 S. Ct. 2521, 2525-26 (2010), this award should be paid directly to Woodmancy (rather than to her attorney).

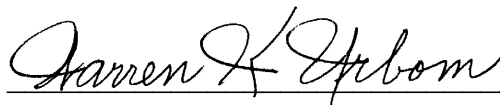
Woodmancy’s request for \$350 for reimbursement of the filing fee is also granted. This amount should be paid out of the judgment fund administered by the Secretary of the Treasury. See 28 U.S.C. § 2412(c)(1) (citing 28 U.S.C. § 2414).

Because § 2412 states that costs, like fees, are awarded to the "prevailing party," see 28 U.S.C. § 2412(a)(1), (d)(1)(A), the award of costs should be paid directly to Woodmancy.

IT IS ORDERED that the plaintiff's application for attorney fees under the Equal Access to Justice Act, ECF No. 25, is denied as moot; the plaintiff's amended application for attorney fees, ECF No. 26, is granted; and the plaintiff is awarded attorney fees in the amount of \$5,552.85 and costs in the amount of \$350. The attorney fee award is to be paid directly to the plaintiff by the Social Security Administration, and the award of costs is to be paid directly to the plaintiff by the Secretary of the Treasury.

Dated August 12, 2013.

BY THE COURT

A handwritten signature in cursive script, reading "Warren K. Urbom", is written over a horizontal line.

Warren K. Urbom
United States Senior District Judge